

SENATE BILL 1383

By Haun

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 4, Part 10, relative to sale of cigarettes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-4-1006(a) is amended by adding the following new subdivision:

(3) Notwithstanding any provision of law to the contrary, all stamps or other tax payment indications prescribed by the commissioner shall be designed and furnished in such a fashion as to permit identification of the person that affixed the stamp or other tax payment indication to the particular package of cigarettes, by means of a number or other mark on the stamp or other tax payment indication. The commissioner shall maintain for not less than three (3) years information identifying the person who affixed the tax stamp or other tax payment indication to each package of cigarettes, which information shall not be confidential or exempt from disclosure to the public.

SECTION 2. Tennessee Code Annotated, Section 67-4-1011, is amended by adding the following language as a new subsection:

(d) On or before the fifteenth business day of each month, each person licensed to affix the state tax stamp or other tax payment indication to cigarettes shall file with the department, for all cigarettes imported into the United States to which such person has affixed the tax stamp or other tax payment indication in the preceding month, copies of the customs certificates with respect to such cigarettes required to be submitted by 19 U.S.C. §1681a(c).

SECTION 3. Tennessee Code Annotated, Section 67-4-1014, is amended by adding the following language as a new subsection:

(d) For the purpose of enforcing this chapter, the commissioner and any agency to which the commissioner shall have delegated enforcement responsibility may request information from any state or local agency, and may share information with, and request information from, any federal agency and any other agency of any other state or any local agency thereof.

SECTION 4. Tennessee Code Annotated, Section 67-4-1020, is amended by adding the following language as a new subsection:

(h) Cigarettes that are acquired, held, owned, possessed, transported in, imported into, or sold or distributed in this state in violation of Section 67-4-1026 shall be deemed contraband and are subject to seizure and forfeiture pursuant to Section 67-4-1021. Any cigarettes so seized and forfeited shall be destroyed. Such cigarettes shall be deemed contraband whether the violation of Section 67-4-1026 is knowing or otherwise.

SECTION 5. Tennessee Code Annotated, Section 67-4-1024, is amended by adding the following language as a new subsection:

(c) Any person who commits any of the acts prohibited by Section 67-4-1026, either knowing or having reason to know that such person is doing so, or who fails to file with the department the certificates required by Section 67-4-1011(d), is guilty of a

felony, punishable by a fine of not more than five thousand dollars (\$5,000) or imprisonment of not more than five (5) years, or both.

SECTION 6. Tennessee Code Annotated, Section 67-4-1026(a), is amended by deleting the existing subsection in its entirety and by replacing it with the following new language:

(a) It shall be unlawful for any person:

(1) To sell or distribute in this state; to acquire, hold, own, possess, or transport, for sale or distribution in this state; or to import, or cause to be imported, into this state for sale or distribution in this state:

(A) Any cigarettes the package of which:

(i) Bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed or used in the United States, including, but not limited to, labels stating "For Export Only", "U.S. Tax-Exempt", "For Use Outside U.S.", or similar wording; or

(ii) Does not comply with all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged or imported for sale, distribution or use in the United States, including, but not limited to, the permanent imprinting on the primary packaging of such cigarettes of the precise package warning labels in the precise formats specified in the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1333, and the rotation of such labels pursuant thereto; and all federal trademark and copyright laws; or

(B) Any cigarettes with respect to which any person is not in compliance with 15 U.S.C. § 1335a (relating to submission of ingredient

information to federal authorities), 19 U.S.C. § 1681-1681b (relating to imports of certain cigarettes), 26 U.S.C. § 5754 (relating to previously exported tobacco products), or any other federal law or implementing federal regulations;

(2) To alter the package of any cigarettes, prior to sale or distribution to the ultimate consumers, so as to remove, conceal or obscure any statement, label, stamp, sticker or notice described in item (a)(1)(A); or any health warning that is not the precise warning statement in the precise format specified in the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1333; or

(3) To affix any tax stamp or other tax payment indication to the package of any cigarettes described in subsection (a) or altered in violation of subsection (b).

SECTION 7. Tennessee Code Annotated, Title 67, Chapter 4, Part 10, is amended by adding the following language as a new section:

67-4-1027.

A violation of Section 67-4-1026 shall constitute an unfair and deceptive trade practice as provided in Section 47-18-104, and, in addition to any other remedies or penalties set forth in this chapter, shall be subject to any remedies or penalties available for a violation of that section.

SECTION 8. Tennessee Code Annotated, Title 67, Chapter 4, Part 10, is amended by adding the following language as a new appropriately designated section:

67-4-1028.

Any person who sustains economic or commercial injury as a result of a violation of Section 67-4-1026 may bring an action for appropriate injunctive or other equitable relief; actual damages sustained by reason of a violation of that section; and, as determined by the court, interest on such damages from the date

of the complaint, costs and reasonable attorney's fees. If the trier of fact finds that the violation is egregious, the judgment may be increased to an amount not in excess of three (3) times the actual damages sustained by reason of such violation.

SECTION 9. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 10. The act shall take effect July 1, 2001, the public welfare requiring it.